

## § 1779.79

days of receipt of demand from the holder.

(b) *Agency repurchase.* (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase (less the lender's servicing fee) within 30 days after a specific written demand directed to the Agency. The copy of the demand on the lender is not sufficient. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter. The lender shall not charge the Agency any servicing fees nor are any such fees collectible from the Agency.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder or duly authorized agent must also include evidence of the right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Agency will be subrogated to all rights of the holder. The holder must include in the demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from the date of demand to the proposed payment date. Unless otherwise agreed to by the Agency, such proposed payment will not be later than 30 days from the date of demand.

(3) The lender must promptly provide the Agency with the information necessary for the Agency's determination of the appropriate amount due the holder upon the Agency's notification to the lender of the holder's demand for payment. This information must be certified by an authorized officer of the lender. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved before payment will be approved. The Agency will notify both parties and such conflict will sus-

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pend the running of the 30-day payment requirement.

(4) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency may set off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the Loan Note Guarantee.

(c) *Repurchase for servicing.* When the lender determines that repurchase of the guaranteed portion of the loan is necessary to service the loan, the holder must sell the guaranteed portion to the lender for the unpaid principal and interest balance (less the lender's servicing fee). The guarantee does not cover interest accruing after 90 days from the date the lender's or Agency's letter requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

## § 1779.79 [Reserved]

## § 1779.80 Interest rate changes after loan closing.

(a) *General.* Subject to the restrictions below, the borrower, lender, and holder (if any) may collectively effect a permanent reduction in the interest rate on the guaranteed loan at any time during the life of the loan on written agreement by all of the applicable parties. After such a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. When the Agency is a holder, it will concur only when it is demonstrated that the change is more viable than liquidation and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination are

the Government's cost of borrowing money and the project's enhancement of rural development. The monetary recovery must be greater than the liquidation recovery, and a financial feasibility analysis must show the project's continued viability.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest rate changes. However, the lender may not issue a new note.

(b) *Increases.* No increases in interest rates will be permitted under the loan guarantee except the normal fluctuations in approved variable interest rate loans.

#### § 1779.81 Liquidation.

Liquidation will occur when the lender concludes that liquidation of the guaranteed loan is necessary because of default or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time and the Agency concurs with the lender; or the Agency, at any time, independently concludes that liquidation is necessary. The lender will proceed as expeditiously as possible, including giving any notices or taking any legal actions required by the security instruments.

(a) *General.* If a lender has made a loan guaranteed by the Agency under previous regulations, the lender has the option to liquidate the loan under the provisions of this part or under the provisions of previous regulations. The lender will notify the Agency in writing within 10 days after its decision to liquidate, which regulatory provisions it chooses to use. The lender may not choose some provisions of one regula-

tion and other provisions of the other regulation.

(b) *Acquiring property titles.* If a lender acquires title to property, the Agency may elect to permit the lender the option of calculating the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property. The lender must submit to the Agency a written request to use this option within 15 days of acquiring title and the Agency must agree, in writing, prior to the lender submitting any request for estimated loss payment.

(c) *Liquidation plan.* The lender will (within 30 days after a decision to liquidate) submit to the Agency, in writing, a proposed, detailed liquidation plan. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. The lender's liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan notes and related security instruments, a copy of the payment ledger or other documentation which reflects the outstanding loan balance and accrued interest to date, and the method of computing the interest;

(2) A complete list of collateral;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including the recommended action for acquiring and disposing of all collateral;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense;

(7) A schedule to periodically report to the Agency on the progress of the liquidation;

(8) Estimated protective advance amounts with justification;

(9) Proposed protective bid amounts on collateral to be sold at auction and a discussion of how the amounts were determined;